justice could only be met by recognizing the title of both the parties and giving them an opportunity of enjoying the office by rotation.

4. In modification, therefore, of the Deputy Commissioner's decision Government direct that both the 1st plaintiff and the 1st defendant be appointed and registered as patels and that the office be held by them in turns of five years each.

No. R. 12273—*R. M.* 234-05-4, *dated Bangalore, 23rd March* 1906.

Copy of the above is forwarded to the Deputy Commissioner of the Tumkur District, together with the records received with his docket No. 546, dated the 7th December 1905.

Appeal No. 104 *of* 1902-03.

Appellants.	*Versus*	Respondent
Basve Gowda and others of Jodi Danaikenhalli village in the Belur Taluk.	——	Kondi Naranachar and other vrittidars of the said Jodi village.

Subject.

Claim of the appellants to exemption from the payment of full assessment on the Gowda Umbli lands in their possession in the Jodi Danaikenhalli village in the Belur Taluk.

The facts of the case appear sufficiently from the following:—

Decision.

The appellants claim exemption from the payment of full assessment on the Gowda Umbli lands in their enjoyment.

2. On the 11th October 1905 Government remitted the case to the Survey and Settlement Commissioner with the following observations:—

"It is admitted that the lands in question are Gowda Umbli lands, that they are entered as such in the Inam Register, that the holders thereof were only paying a jodi both before and after the Inam Settlement that the village was surveyed and settled and taken under Government management in 1884, that full assessment was being levied during the period of such management, and that since the restoration of the village to the Inamdars there has been a dispute as to whether what they are entitled to levy is jodi or full assessment. It is also conceded that one of the appellants continues to do the duties of 'Grama Patel.' The Inamdars (respondents) offer to pay the appellants (or rather the one that does the Grama Pateli duties) a Potgi allowance in the same way as in Government villages. There seem to be more than one kind of Patel in this village as in other malnad tracts. The Gowda Umbli lands were not noticed at the time of the Inam Settlement. (*Vide* Inam Superintendent's docket No. 64, dated the 28th February 1903.) The mere fact that for some time Government had the management of the village and enforced from the Gowdas payment of full assessment, does not seem to prejudicially affect the rights (if any) of the Gowdas as against the Inamdars." "The Survey and Settlement Commissioner and the Inam Superintendent will be requested to favor Government with his opinion as to whether having regard to all the circumstances of the case the appellants (Gowdas) can be compelled to forego their Umbli Hak and to pay full Survey assessment, the Grama Patel alone in return receiving a Potgi allowance from the Inamdars as in Sirkar maidan villages."

3. That officer has now given his opinion in favor of the appellants, as will be seen from the following extract from his report:—

"The village of Danaikenhalli had the Survey Settlement introduced long ago, at the instance of the Inam Superintendent, Colonel Cole. Docket No. 530, dated 17th March 1879."

"The Survey Settlement was introduced by an Assistant Commissioner but no settlement of the particular case under reference was made although in the Pahanisud and in the Putpahani specific mention is made of the Gowda Umbli lands concerned. The remaining settlement papers contain no mention of these lands but the settlement was carelessly carried out, even the Phaisal Patrik not having been prepared."

"So far as can be ascertained by comparing the Pahanisud with the Inam Register, which latter gives the Gowda Umbli (Jodi) as Rs. 33-5-2, the survey assessment of the land comes to very little more than the old jodi."

"The Potgi settlement has also been effected but no land emoluments appear to Patel (sic) and I am not aware whether the Potgi amount has been regularly paid to the officiator or not."

"I think that under the circumstances of this village which has been restored to the Inamdars under circumstances regarding which I have no information, the appellant Gowdas should either pay the old jodi on the lands plus half the difference between the old jodi and the full survey assessment on the principle of Inam. Rule VIII (*f*), or the Potgi should be revised. I recommend the former alternative. At any rate the appellants cannot, in my opinion, be deprived of their Umbli hak."

4. Government, in concurrence with Colonel Grant, direct that the appellants' Umbli hak be left undisturbed and that their liability be restricted to the old jodi on the lands in question plus half the difference between the old jodi and the full survey assessment on the principle of Inam Rule VIII (*f*).

No. R. 12145—*Mis. P.* 41-03-10, *dated Bangalore, 22nd March* 1906.

Copy of the above is forwarded to the Deputy Commissioner of the Hassan District, together with the records received with his letter No. 913, dated the 27th May 1905.

Review Application No. 3 *of* 1905-06.

Petitioners (appellants)	*Versus*	Counter-petitioner (respondent)
1. Dod Basappa, 2. Sidda Lingappa.		Basappa, minor, by guardian Sidda Lingappa.

Subject.

Claim to the Pateli office of Chowdanayakankoppa in the Shikarpur Taluk.

The facts of the case appear sufficiently from the following :—

Decision.

One Neeli Siddaiya was the original Patel of the village in question. On his death some fifty years before the Potgi Settlement of 1886-87 his second son Gurrappa, who was literate, was appointed his successor in preference to his first son Siddaiya, who was illiterate. Gurrappa was confirmed at the settlement above mentioned. The Deputy Commissioner then observed, "he (Gurrappa) combines in himself both the hak and his right as actual officiator. I do not see reason to disturb his possession. He will be confirmed as hakdar and Registerdar. Appellant's (first son's son's) name appears under Registerdar in the Register of 1865. He may perhaps be entitled to get the hak after Gurrappa's death or removal from the appointment." In pursuance of this order of confirmation, dated the 21st January 1887, Gurrappa continued to hold the office until his death, which occurred in 1900. His son Siddappa predeceased him leaving a son (the respondent) who has been appointed his successor. The appellants 1 and 2 who are the son and the grandson, respectively, of the original Patel's eldest son, sued to establish their preferential right and to oust the respondent. The suit failed in the Courts both of the Assistant Commissioner and of the Deputy Commissioner. Hence this appeal, in support of which reliance is placed firstly on the rules of primogeniture and secondly on the observation contained in the Deputy Commissioner's order of 1887. Government hold that the appellant's contention is not entitled to prevail. The younger son was as much a hakdar as the elder. When the office fell vacant, the better of the two had to be appointed and not necessarily the senior in birth. The rule relied on is not literally and invariably enforcible in such cases regardless of other qualifications. The choice fell upon the more competent of the sons, *viz.*, Gurrappa, the grandfather of the respondent. He held the office without interruption for such a long period as sixty to seventy years. His son's son is naturally entitled to take his place in preference to his brother's son or grandson. The Deputy Commissioner's order of 1887 did not make a final pronouncement in favor of the present appellants but only referred incidentally to what might possibly happen in a certain event. That remark was in the nature of an *obiter dictum* which did not bind either Gurrappa or his heirs to the extent of precluding them from contesting its correctness on the occurrence of the event therein contemplated. That being so, it is clear that the authorities below did not err in their estimate of the significance to be attached to the observation. For obvious reasons, the respondent has been rightly preferred to the appellants and Government see no reason to interfere.

The appeal fails and must be dismissed.

No. R. 12359—*R. M.* 251-04-10, *dated Bangalore, 26th March* 1906.

Copy of the above is forwarded to the Deputy Commissioner of the Shimoga District, together with the records received with his letter No. 620—452, dated the 14th February 1906.